CRP 31/2005
BEFORE
THE HON'BLE MR JUSTICE I. A. ANSARI
J U D G E M E N T & O R D E R
(O R A L)

By the present revision petition, the petitioner, who is defendant in Money Suit No. 73/2003, has challenged the legality of the order, dated 19-02-2005, passed , in Misc. (J) Case No. 70/2004 (arising out of Money Suit No. 73/2003 aforement ioned) by the learned Civil Judge (Sr. Divn.), Kamrup, Guwahati, whereby the lea rned trial Court has rejected the defendant-petitioner's application, made under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred t o as the said Act) seeking to get referred the dispute, raised in the said sui t, to arbitration.

2. The moot question, which has been raised in the present revision, is thi s: When existence of an arbitration clause in an agreement arrived at between th e parties to a suit is admitted, whether the applicability of the arbitration cl ause to the dispute, raised in the suit, is determinable by the arbitrator in te rms of the relevant arbitration agreement or is it for the civil court to decide as to whether the provisions for arbitration, appearing in the agreement betwee n the parties concerned, are attracted to the dispute or not? Yet another import ant question, which the present revision petition has raised, is this: Can a civ il court decline to refer a dispute, raised in a suit, for arbitration despite e xistence of the provisions for arbitration contained in the agreement between th e parties concerned and, if so, when can the civil court decline to refer the di spute to arbitration?

3. Before answering the questions, which have been raised in the present re vision, the material facts, which are not in dispute and various stages, which h ave led to the present revision, need to be noted and are, therefore, set out, i n brief, as follows:-

(i) An agreement was arrived at, with effect from 01-05-1997, between th e plaintiff-opposite party herein, which was a company registered under the Comp anies Registration Act, and Rhone Poulenc India Limited (hereinafter referred to as RPIL), which was also, at the relevant point of time, a company registered under the Companies Act. Under this agreement, the opposite party herein (which is hereinafter referred to as the plaintiff company) was appointed as the cle aring and forwarding agent of RPIL for entire Northeastern region.

(ii) Claluse 17 of this agreement had made provisions of arbitration and read as follows:-

In the event of any dispute arising between the parties out of the subject cont ained herein or touching upon these presents during the pendency of this agreeme nt or thereafter the same shall be referred to Arbitration Act. Bombay as provid ed under the Rules & Regulations on the subject of Arbitration framed by the Bom bay Chambers of Commerce and the competent court in Mumbai alone shall have juri sdiction in the matter.

(iii) The above agreement was renewed for a further period from 01-04-2001 to 31 -03-2002. Before the said agreement was renewed, w.e.f. 01-04-2001, the petition er herein (which is hereinafter referred to as the defendant Company) got 40% share of the RPIL by an agreement, dated 22-12-2000. The defendant Company, then , made a public offer of the shares as required under the Security and Exchange Board of India (Substantial Acquisition of Shares and Take over) Regulations, 19 97, and acquired a further 20% equity of the RPIL. The defendant Company, therea fter, made an application, in the Bombay High Court, seeking permission for amal gamation of the RPIL into the defendant Company. When the matter stood so poised , RPIL served a letter, dated 27-01-2001, on the plaintiff Company informing the latter that the RPIL was getting merged into M/S Nicholus Piramal India Ltd. (i

.e., the defendant Company), that the said merger had been approved by the share holders of both the companies and that the matter was pending in the Bombay High Court for its approval. By their letter, dated 20-07-2001, aforementioned, RPIL clarified that on receipt of the order from the Bombay High Court approving the merger as had been sought for, the RPIL would become M/S Nicholas Piramal India Ltd. By this letter, dated 20-07-2001, RPIL also informed the plaintiff Company that once the merger was approved, it would not be possible for them to continue to maintain the appointment of the plaintiff Company as the clearing and forwarding agent, for, with the approval of the merger by the Bombay High Court, the RPIL would cease to have any legal existence inasmuch as it would stand merged into M/S Nicholas Piramal India Ltd. By this letter, dated 20-07-2001, the RPIL further informed the plaintiff Company that with effect from three months from the date of the said letter, or the date of the order of the Bombay High Court, whichever is earlier, the contract agreement existing between the plaintiff Company and the RPIL, appointing the former as the clearing and forwarding agent of the latter, would stand terminated and that all the dues, thereafter, would be settled by M/S Nicholas Piramal India Ltd. (i.e., the defendant Company) on receiving possession of the stock and relevant records from the plaintiff Company. When the arrangement for merger, as indicated hereinbefore, was pending in the Bomba y High Court, the plaintiff Company raised its objection to the said merger by filing affidavit. However, by an order, dated 27-09-2001, the Bombay High Court, in Company Petition No. 685/2001, which arose out of Company Application No. 252 /2001, passed an order approving, inter alia, amalgamation of the RPIL into the defendant Company. The relevant part of the order, dated 27-09-2001, aforementioned reads as follows:-

(8) the Affidavit of Mr. Uday Krishna Paul, Managing Director of Zenith Drugs & Allied Agencies Pvt. Ltd. the objector opposing the petition, dated 21st day of September, 2001 in support of Company Application Lodging No. 670 of 2001.

THIS COURT DOTH HEREBY SANCTION with effect from 1st day of April, 2001 the arrangement embodied in the Scheme of Arangement between the Rhone-Poulenc (India) Ltd. (the 1st Transferor Company). NPIL Fininvest Limited (the 2nd Transferor Company), Super Pharma Limited (the 3rd Transferor Company) and Nicholas Pir amal India Limited (the Transferee Company) as set out in Exhibit A to the etition and also in the Schedule hereto subject to the Transferee Company affirms that all the liabilities and obligations of RPIL prior to and on or after the appointed date, under the respective C & F Agency Agreement between RPIL and the respective objectors are hereby assumed by NPIL and the undertaking by NPIL tha t upon sanction and scheme taking effect NPIL will abide by the arbitration agre ements with the objectors under the respective agreements and that it will not c ontend that there is no arbitration agreement between it and the respective obje ctors.

(iv) With the passing of the order, dated 27-09-2001, aforementioned permitti ng the arrangement of merger, all assets and liabilities of the RPIL became the assets and liabilities of the defendant Company. Clauses 7.1 and 7.2 of the sche me of arrangement, sanctioned by the Bombay High Court, read as follows:

7.1. Subject to the provisions of the Scheme, all contracts, deeds, bonds agree ments, arrangements, insurance policies and other instruments of whatsoever natu re of which RPIL/NFL/SPL as the case may be is a party, or to the benefit of whi ch RPIL/NFL/SPL may be eligible, and which are subsisting or operative or having effect immediately on or before the Effective Date, shall be in full force and effect in favour of or against NPIL and may be enforced as fully and effectively as it instead or RPIL/NFI?SPL as the case may be, NPIL had been a party or bene ficiary thereto.

7.2 All agreements entered into by RPIL, NFL and SPL with their respective banke rs, distributors, stockists, agents, etc, if any, shall continue to be in full f orce and elect and may be enforced by or against NPIL.

(v) In terms of the arrangement for merger, which was sanctioned by the Bombay H igh Court by its order, dated 27-09-2001, aforementioned, not only the assets an

d liabilities of the erstwhile RPIL came to be vested in the defendant Company, but even the arbitration clause, which existed between the plaintiff Company and the RPIL became, under the said sanctioned arrangement of merger, an agreement between the plaintiff Company, on the one hand, and the defendant Company, on th e other.

(vi) Before, however, the merger was sanctioned on 27-09-2001, the plaintiff Com pany instituted Title Suit No. 241/2001, in the Court of the Civil Judge (Sr. Di vn.) No. 2, Guwahati, against the RPIL, contending, inter alia, that the letter/ notice, dated 20-07-2001, aforementioned issued by the RPIL informing the plaint iff Company that the agreement existing between them, whereunder the plaintiff C ompany had been appointed as clearing and forwarding agent of the RPIL, would ce ase to exist, with effect from three months from the date of the said letter or the date of the order of the Bombay High Court sanctioning the arrangement of me rger, whichever was earlier, was illegal. By this suit, the plaintiff Company so ught for, inter alia, a decree declaring that the appointment of the plaintiff C ompany by the RPIL as their clearing and forwarding agent was valid, subsisting and legal and also for an injunction restraining the RPIL from taking any action on the basis of the letter, dated 20-07-2001, aforementioned or, in any manner, terminating the plaintiff Company's appointment as their clearing and forwardin g agent. A petition was also filed, in the said suit, seeking temporary injuncti on in terms of the prayers made in the suit as indicated hereinbefore. This appl ication for injunction gave rise to Misc. Case No. 111/2001. The said suit ended , on 24-12-2001, in a compromise decree, on the basis of a compromise petition f iled by the plaintiff Company and the defendant Company. Following the compromis e decree, so granted, the defendant Company paid to the plaintiff Company a sum of Rs. 23,50,000/-, which included security deposit with interest accrued thereo n.

(vii) Alleging that the said compromise decree had not been fully acted upon, the plaintiff Company sought for execution of the compromise decree aforemention ed. This petition for execution of the compromise decree gave rise to Title Exec ution Case No. 04/2002. In this execution proceeding, the defendant Company file d a petition, under Section 151 CPC, seeking, inter alia, recall of the said com promise decree on the ground of fraud having been played on them by the plaintif f Company.

(viii) While the said execution proceeding was still pending, the plaintiff Com pany instituted Money Suit No. 73/2003 aforementioned, the case of the plaintiff Company, in this suit, being, in brief, thus: In violation of the compromise de cree, the defendant Company has not appointed the plaintiff Company as their sto ckiest for Guwahati and Agarwala and no goods had been delivered to the plaintif f Company. This apart, due to premature termination of the agreement existing be tween the parties, the plaintiff Company has sustained loss to the tune of Rs. 1 .26 crores. The defendant Company has also harassed the plaintiff Company and th eir functionaries by dragging them to criminal cases and also making the plainti ff Company sustain thereby loss of good will. With the allegations so made again st the defendant Company, the plaintiff Company sought for, inter alia, a decree for Rs. 20 crores, against the defendant Company, as compensation with interest .

(ix) The defendant Company appeared in the Money Suit No. 73/2003 and filed a pe tition therein setting out the facts, which had led to the merger of the RPIL in to the defendant Company and further indicating therein that in terms of Clause 17 of the agreement, dated 01-05-1997, there exists an arbitration clause betwee n the parties and, hence, the dispute, raised in the suit, needs to be referred to arbitration in terms of Section 8 of the said Act. This application gave rise to Misc. (J) Case No. 70/2004. Objection to the prayer for referring the disput e to arbitration was raised by the plaintiff Company and after hearing the learn ed counsel for the parties concerned, the learned Court below passed the impugne d order, dated 19-02-2005, whereby the defendant Company's petition for referrin

g the dispute to arbitration was dismissed. The defendant Company is, now, befor e this Court with the help of the present revision petition.

4. I have heard Mr. D Barua, learned counsel for the defendant Company-peti tioner, and Mr. RL Yadav, learned counsel for the plaintiff Company-opposite par ty.

5. Let me, now, turn to the question as to whether the impugned order is su stainable in law. While considering this aspect of the case, one has to take not e of the provisions of Section 8 and Section 16 of the said Act, which read as u nder:

8. Power to refer parties to arbitration where there is an arbitration agreemen t. - (1) A judicial authority before which an action is brought in a matter whic h is the subject of an arbitration agreement shall, if a party so applies not la ter than when submitting his first statement on the substance of the dispute, re fer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unle ss it is accompanied by the original arbitration agreement or a duly certified c opy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be c ommenced or continued and an arbitral award made.

16. Competence of arbitral tribunal to rule on its jurisdiction. - (1) The arbit ral tribunal may rule on its own jurisdiction, including ruling on any objection s with respect to the existence or validity of the arbitration agreement, and fo r that purpose, -

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party sha ll not be precluded from raising such a plea merely because that he has appointe d, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority sh all be raised as soon as the matter alleged to be beyond the scope of its author ity is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) of sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting t he plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for sett ing aside such an arbitral award in accordance with section 34.

6. While considering the question as to whether the impugned order is susta inable it is important to note that in paragraph Nos. 4 and 5 of their objection , raised against the defendant Company’s prayer to refer the dispute to arbitrat ion, the defendant Company averred as under:

4. That the statement made in para 4 are not correct and they are not admitted. The clause 17 of the agreement dated 01.05.1997 is irrelevant for deciding the present suit and the said clause can not be invoked in deciding the present suit . The subject matter of the suit cannot be said to be the subject matter of clau se 17 of the agreement dated 01.05.1997.

5. That regarding the statement made in paragraph 5 it is stated that the willingness of the defendant cannot be a ground to invoke the clause 17 of the alleged agreement. The subject matter of the suit will only be decided by court of Civil nature and so the matter cannot be referred to Arbitration.

7. From a careful reading of what the plaintiff Company has stated, in their said objection petition, it becomes transparent that the plaintiff Company admits its existence of an arbitration clause in the agreement, which had been arrived at by the parties. If, in the backdrop of the above fact, Sections 8 and 9 are read together, it becomes clear that when an action brought in a matter before a judicial authority is found to be subject to an arbitration agreement, it is obligatory, on the part of the judicial authority, to refer the parties to arbitration provided that before filing its written statement, the party, applying for referring the dispute to arbitration, has so applied.

8. In the case at hand, it is not in dispute that the defendant Company had applied for referring the parties to arbitration before they (i.e., the defendant Company) had actually filed their written statement. The language of Section 8 is preemptory in nature. When the existence of an arbitration agreement is proved, the question as to whether the arbitration agreement is attracted to the facts of a given case is a question, which has to be decided not by the civil court, but by the arbitrator himself. This position of law is no longer res integra, for, the Apex Court, in Hindustan Petroleum Corpn. Ltd -vs- Pinkcity Midway Petroleums, reported in 2003 6 SCC 503, has made it clear that once there exists an arbitration clause, the judicial authority, under Section 8, has no jurisdiction to go into the question of applicability of the arbitration clause to the facts of the case and it is the arbitral tribunal, which has the jurisdiction, under Section 16, to decide as to whether the arbitration agreement is applicable to the dispute raised by the parties to the agreement or not. The relevant observations made by the Apex Court, in Pinkcity Midway Petroleums (supra), in this regard, read as under

14. This Court in the case of P. Anand Gajapathi Raju v. P.V.G. Raju has held that the language of Section 8 is premptory in nature. Therefore, in cases where there is an arbitration clause in the agreement, it is obligatory for the court to refer the parties to arbitration in terms of their arbitration agreement and nothing remains to be decided in the original action after such an application is made except to refer the dispute to an arbitrator. Therefore, it is clear that if, as contended by a party in an agreement between the parties before the civil court, there is a clause for arbitration, it is mandatory for the civil court to refer the dispute to an arbitrator. In the instant case the existence of an arbitral clause in the Agreement is accepted by both the parties as also by the courts below but the applicability thereof is disputed by the respondent and the said dispute is accepted by the courts below. Be that as it may, at the cost of repetition, we may again state that the existence of the arbitration clause is admitted. If that be so, in view of the mandatory language of Section 8 of the Act, the courts below ought to have referred the dispute to arbitration.

15. The question then would arise: what would be the role of the civil court when an argument is raised that such an arbitration clause does not apply to the facts of the case in hand? Learned counsel for the appellant contends that it is a matter which should be raised before the arbitrator who is competent to adjudicate upon the same and the civil court should not embark upon an inquiry in regard to the applicability of the arbitration clause to the facts of the case. While learned counsel appearing for the respondent contends that since the applicability of the arbitration clause to the facts of the case goes to the very root of the jurisdiction of the reference to arbitration, this question will have to be decided by the civil court before referring the matter to arbitration even in cases where there is admittedly an arbitration clause. The answer to this argument, in our opinion, is found in Section 16 of the Act itself. It has empowered the Arbitral Tribunal to rule on its own jurisdiction including rule on any objection with respect to the existence of validity of the arbitration agreement. That

apart, a Constitution Bench of this Court in Konkan Rly. with reference to the p ower of the arbitrator under Section 16 has laid down thus:

21. It might also be that in a given case the Chief Justice or his designate ma y have nominated an arbitrator although the period of thirty days had not expire d. If so, the Arbitral Tribunal would have been improperly constituted and be wi thout jurisdiction. It would then be open to the aggrieved party to require the Arbitral Tribunal to rule on its jurisdiction. Section 16 provides for this. It states that the Arbitral Tribunal may rule on its own jurisdiction. That the Arb itral Tribunal may rule 'on any objections with respect to the existence or vali dity of the arbitration agreement' shows that the Arbitral Tribunal's authority under Section 16 is not confined to the width of its jurisdiction, as was submit ted by learned counsel for the appellants, but goes to the very root of its juri sdiction. There would, therefore, be no impediment in contending before the Arbi tral Tribunal that it had been wrongly constituted by reason of the fact that th e Chief Justice or his designate had nominated an arbitrator although the period of thirty days had not expired and that, therefore, it had no jurisdiction.

16. It is clear from the language of the section, as interpreted by the Constitu tion Bench judgment in Konkan Rly. That if there is any objection as to the appl icability of the arbitration clause to the facts of the case, the same will have to be raised before the Arbitral Tribunal concerned. Therefore, in our opinion, in this case the courts below ought not to have proceeded to examine the applic ability of the arbitration clause to the facts of the case in hand but ought to have left that issue to be determined by the Arbitral Tribunal as contemplated i n clause 40 of the Dealership Agreement and as required under Sections 8 and 16 of the Act.
(Emphasis supplied)

9. In the background of the fact that in the present case, the existence of arbitration clause has been admitted by the plaintiff Company, the learned tria l Court, in the face of the authoritative pronouncements in Konkan Rly reported, in 2002 (2) SCC 388,. coupled with what has been held in Pinkcity Midway Petrol eums (supra), had no jurisdiction to decide whether the subject-matter of the su it attracted the arbitration clause or not. To put it differently, it is really for the arbitrator to decide, under Section 16 of the said Act, if the arbitrati on clause applies to the subject-matter of the suit or not. Unless, therefore, t he plaintiff Company could show that the decisions, in Kankan Rly. (supra) and P inkcity Midway Petroleums (supra), were not applicable to the facts of the case at hand, the learned trial Court had no option, but to refer the parties to arbi tration.

10. Contending that to the facts of the case at hand, the decision in Pinkci ty Midway Petroleums (supra) and Kankan Rly, (supra), are not attracted, Mr. Yad av has referred this Court to the case of Nathani Steels Limited V. Associated C onstructions, reported in 1995 Supp. (3) SCC 324.

11. While considering the case of Nathani Steels Limited (supra), it needs t o be noted that in Nathani Steels Limited (supra), after the dispute between the parties had been settled, an allegation was made that while making the calculat ion, there was a mistake. It is in such circumstances that the Apex Court held t hat once the dispute and difference between the parties had been finally and ami cably settled, it was not open to one of the parties to seek recourse to arbitra tion clause as if the dispute still survived without, first, having the settleme nt set aside on the ground of mistake as permissible in law.

12. In the present case, the dispute, which had been raised in Money Suit No . 241/2001, was, eventually, resolved by way of a compromise decree. It was the compromise decree, which had finally settled the disputes and differences raised in the said title suit. So long as the compromise decree exists, the parties ar e bound by the compromise decree. If the terms of the compromise have not yet be

en acted upon, the remedy lies in execution of the decree. No wonder, therefore, that the plaintiff Company has already sought for execution of the decree for the purpose of enforcing the terms of the compromise decree. The Money Suit, which has, now, been filed by the plaintiff Company, is not for enforcing the compromise decree, but on the ground that on account of illegal termination of their appointment as clearing and forwarding agent and/or as a consequence of criminal prosecution, which has been launched by the defendant Company, the plaintiff Company has sustained loss to the tune of Rs. 20 Lakhs. All these disputes do not fall within the realm of the said compromise decree. Had it been the case, in the said money suit, that the compromise decree had not been acted upon, the remedy lied in executing the decree and not in instituting a fresh suit. When the plaintiff Company has itself instituted the suit, it cannot, in the same breath, contend that the disputes and differences between the parties have been fully and finally settled. Logically, therefore, one has no option but to hold that the dispute raised in the present Money Suit, is not covered by the compromise decree and since the dispute is not covered by the terms of decree, and there is an arbitration clause, it is not the civil Court, which can decide as to whether the arbitration clause is applicable to the disputes raised in the suit or not. The jurisdiction for determination of such a question lies with the arbitrator, for, it is the arbitrator, who can decide applicability of the arbitration to the facts of a given case.

13. Situated thus, it is clear that the learned trial Court committed serious error of jurisdiction in declining to refer the parties to arbitration. Such an order is not only without jurisdiction but shall, if allowed to survive, cause serious miscarriage of justice.

14. It has also been contended by Mr. RL Yadav that even if a part of the dispute is triable by a civil Court, such a dispute cannot be referred to arbitration. The proposition of law so put forward cannot be doubted. In the present case, however, it is crystal clear that no part of the dispute, raised in the suit, is exclusively determinable by the civil Court and/or not covered by the arbitration clause. In such circumstances, particularly, when the existence of the arbitration clause has been admitted, the learned trial Court had no option, but to refer the parties to arbitration in term of the provisions of Section 8 of the said Act.

15. I may also point out that objection to the maintainability of the revision has been raised by Mr. Yadav on the ground that against the impugned order, dated 19-02-2005, no revision can be entertained under Section 115 of the CPC. While considering the objection, so raised, it needs to be noted that before the CPC (Amendment) Act, 2002, came into force, an order, which suffered from jurisdictional error, could have been interfered with by the High Court in exercise of its revisional jurisdiction under Section 115 if the order, under challenge, was likely to cause failure of justice or irreparable loss or injury to the party approaching the revisional Court, but with clause (b) of the proviso to Section 115 (1) having been deleted under the new Act, the implication is that even if an order suffers from jurisdictional error or causes failure of justice or irreparable injury to a party, who approaches the Court, the order will not be interfered with in revision unless the order, which is sought to get revised, is such that had the order been made in favour of the party applying for revision, it would have terminated the suit or the proceeding.

16. On reverting to the case at hand, what attracts the eyes, most prominently, is that by the impugned order, dated 19-02-2005, the learned Court below has declined to refer the subject-matter of dispute to arbitration. Had the application filed by the defendant Company been allowed, the suit would have ended. Viewed thus, it is clear that though the impugned order was passed at an interlocutary stage of the progress of the suit, this order, had it been made in favour of the defendant Company, would have brought to an end the suit.

17. Coupled with the above, it is worth noticing that by their petition made under Section 8, the defendant Company has contended, inter alia, that a civil court has, in the face of the arbitration clause existing in the agreement reached by and between the parties, no jurisdiction to decide the lis. In consequence of the dismissal of the said petition, the logical conclusion is that the learned trial Court has assumed jurisdiction to try the suit, though the defendant Company contended that learned trial Court had no jurisdiction to try the suit. In such circumstances, it clearly follows that since the defendant Company's contention was legally correct, the learned trial Court had no jurisdiction to deal with the suit any further. By the impugned order, the learned Court below, it is clear, has refused to exercise, though it had, jurisdiction to refer the parties to arbitration.

18. There is yet another angle from which the maintainability of the revision can be considered. When a civil court does not have jurisdiction to entertain a suit after an application, under Section 8 of the said Act, is made for arbitration, it follows, as a corollary, that the Court, which refused to refer the parties to arbitration, has failed to exercise jurisdiction. This would amount to failure of justice and cause irreparable injury to the party concerned. In such circumstances, one can have no escape from the conclusion that the impugned order, whereby the learned trial Court has refused to refer the parties to arbitration in terms of Section 8 is an order, which would be revisable under Section 115 of the CPC, if the impugned order is held to be contrary to the provisions of Sections 8 and 16 of the said Act. I am guided to adopt these views from the observations made in Pinkcity Midway Petroleums (supra), wherein the Apex Court while dealing with such an aspect of the case, observed, at para 24, thus:

> 24. This brings us to consider the last question involved in this appeal, namely, the maintainability of the revision petition before the High Court under Section 115 CPC. The High Court by the impugned order has come to the conclusion that its jurisdiction to entertain a revision petition would only be available if the order impugned is such that if it is allowed to stand, it would occasion failure of justice or cause an irreparable injury to a party against whom the said order is made. In support of this finding, the High Court has relied upon certain judgments of this Court. Having perused the said judgments, we are of the opinion that the findings given in those judgments do not apply to the facts of this case at all. We have come to the conclusion that the civil court had no jurisdiction to entertain a suit after an application under Section 8 of the Act is made for arbitration. Therefore, we are of the opinion that the trial court erred when it rejected the application of the appellant filed under Sections 8 and 5 of the Act. In such a situation, refusal to refer the dispute to arbitration would amount to failure of justice as also causing irreparable injury to the appellant. For the said reason, we are of the opinion that the High Court has erred in coming to the conclusion that the appellant was not entitled to the relief under Section 115 CPC.

19. In the result and for the foregoing reasons, this revision succeeds. The impugned order is set aside and the learned trial Court is hereby directed to refer the parties concerned to arbitration.

20. Considering the matter in its entirety and in the interest of justice, it is hereby directed that the parties shall appear, in Money Suit No. 73/2003, on 10-04-2007 and on that day, the learned Court below shall pass appropriate orders.

21. With the above observations and directions, this revision shall stand disposed of with costs.

22. Send back the LCRs.